Supreme Court, U.S.
FILED
FEB 23 1996
CLERK

No. 95-1185

In The
Supreme Court of the United States
October Term, 1995

Fort Peck Assiniboine and Sioux Tribes
Petitioner,

v.

Leslie Scarlotte Tubridy and Patrick Tubridy
Respondents.

On Petition For Writ Of Certiorari
To The Illinois Supreme Court

RESPONDENTS' BRIEF IN OPPOSITION

BRUCE D. STROM*
JEFFREY S. McCUTCHAN
Strom, Repay & McCutchan
920 Davis Road, Suite 302
Elgin, Illinois 60123
(847) 888-1616
Counsel for the Respondents

*Counsel of Record

QUESTION PRESENTED

Whether the Indian Child Welfare Act requires that Indian tribal courts have exclusive jurisdiction over the custody of children who have not been raised as part of an existing Indian family, but rather have been abandoned by a parent under well established common law principles to be raised by a non-Native American parent in a non-Native American environment.

TABLE OF CONTENTS

Question Presented i

Table of Authorities iii

Objection to Jurisdiction 1

Statutory Provision Involved 2

Statement of the Case 2

Reasons For Denying the Writ 4

1. The United States Supreme Court lacks jurisdiction to review the Illinois Supreme Court ruling, because it is not a final judgment. 4

2. The ruling by the Illinois Supreme Court is consistent with the objectives of the Congressional scheme set forth in the Indian Child Welfare Act, well established common law principles and the reasoning of this court in Mississippi Band of Choctaw Indians v. Holyfield given the dramatically different circumstances. 9

Conclusion 15

TABLE OF AUTHORITIES

Cases	Page
Matter of Adoption of Baade, 462 N.W.2d 485 (S.D. 1990)	13
Matter of Adoption of Baby Boy D, 742 P.2D 1059 (Okl. 1985)	13
In the Matter of Baby Boy Doe, 849 P.2d 925 (Idaho 1993)	13
In re Adoption of Baby Boy L., 645 P.2d 168 (Kan. 1982)	13
Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975)	6,8
In the Matter of Application of Bertelson, 617 P.2d 121 (Mont. 1980)	13
C.E.H. v. L.M.H., 837 S.W.2d 947 (Mo. App. 1992)	13
In re Interest of C.W., 479 N.W.2d 105	13
California v. Stewart, 384 U.S. 436 (1966)	7

Matter of Adoption of a Child of Indian Heritage,
543 A.2d 925 (N.J. 1988) 13

Claymore v. Serr,
405 N.W.2d 650 (S.D. 1987) 13

Matter of Adoption of Crews,
825 P.2d 305 (Wash. 1992) 13

Matter of D.S.,
577 N.E.2d 572 (Ind. 1991) 13

Donlon v. Miller,
42 Ill.App.3d 64 (1976) 11

In re Junious M.,
193 Cal.Rptr. 40 (Cal.App. 1983) 13

Mills v. Alabama,
384 U.S. 214 (1966) 6

Mississippi Band of Choctaw Indians v. Holyfield,
490 U.S. 48 (1989) passim

North Dakota State Bd. of Pharmacy v. Snyder's
Drug Stores, Inc., 414 U.S. 156 (1973) 5

Radio Station WOW, Inc. v. Johnson,
326 U.S. 120 (1945) 7

S.A. v. E.J.P.,
571 So.2d 1187 (Ala. Civ. App. 1990) 13

In Interest of S.A.M.,
703 S.W.2d 609 (Mo. App. 1986) 13

Matter of S.C.,
833 P.2d 1249 (1992) 13

Matter of Adoption of T.N.F.,
781 P.2d 973 (Alaska (1989) 13

Matter of Adoption of T.R.M.,
525 N.E.2d 298 (Ind. 1988) 13

Quinn v. Walters,
320 Ore. 233 (Ore. 1994) 13

Law Review Articles Page

Note: The Indian Child Welfare Act: Does it Cover Custody Disputes Among Extended Family Members? 1 Alaska Law Review 157 (1984). 14

Statutes Page

28 U.S.C. §1257(a) passim

28 U.S.C. §1257 2

25 U.S.C. §§1901 et seq. passim

25 U.S.C. §1911 4

25 U.S.C. §1912(d) 13

25 U.S.C. §1914 13

25 U.S.C. §1916(b) 13

25 U.S.C. §1920 13

25 U.S.C. §1922 13

Miscellaneous Page

Restatement (Second) Conflict of Laws §22, (1971) 10

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1995

Fort Peck Assiniboine and Sioux Tribes
Petitioner,

v.

Leslie Scarlotte Tubridy and Patrick Tubridy
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

OBJECTION TO JURISDICTION

The judgment of which Petitioner seeks review by its Petition for writ of certiorari is not a final judgment, because the Illinois Supreme Court merely reversed earlier jurisdictional decisions and remanded the case to the circuit court for further proceedings to properly determine jurisdiction. 28 U.S.C. §1257(a) confers upon the United States Supreme Court jurisdiction to review by writ of

certiorari only final judgments rendered by the highest court of a State in which a decision could be had. The judgment herein lacked finality, and thus the matter is not properly before the Court on a petition for writ of certiorari at this time.

STATUTORY PROVISION INVOLVED

28 U.S.C. §1257. STATE COURT; CERTIORARI

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

On November 24, 1992, Leslie Scarlotte (Sansaver) Tubridy and Patrick Tubridy filed a Verified Petition for Adoption in the Circuit Court of Kane County, Illinois, seeking to adopt their niece and nephew, Sandra (Sandy) Ann Sansaver (then age 9) and Richard (Ricky) Joseph

Sansaver (then age 5). (Resp. App. A, p.2.)[1] The aunt and uncle filed this proceeding just days after the children's father, Richard Sansaver, died on November 18, 1992. (Resp. App. A, p.2.) The petition alleged Ms. Ironbear was an unfit person who only sporadically resided with the children, had abandoned them for at least two years prior to the initiation of these proceedings, suffered from the HIV virus, was habitually drunk, and was otherwise unfit, and therefore sought to terminate Ironbear's parental rights. (Resp. App. A, p.3.) Ms. Ironbear died on December 22, 1995.

The children's father was not Native American and had no associations with any Indian Tribe. The children have Indian blood because their natural mother, Ms. Ironbear, was an American Indian. Mr. Sansaver and Ms. Ironbear were never married. Ricky Sansaver was born in Elgin, Illinois, and has lived in the northwest suburban Chicago area his entire life, far removed from any American Indian traditions. Sandy Sansaver was born in Poplar, Montana, but moved with her parents shortly after her birth to the Elgin area, where she has resided and continues to reside. The children were raised by their father, whose last name they chose to assume, in their suburban Chicago community and have had virtually no contact with any Indian Reservation. (Pet. App. F, pp.5-6.)

The Kane County Circuit Court first obtained jurisdiction over the children in February, 1990, in Case No. 90 FKA 82. The father filed a parentage action, involving

---

[1]References to the Respondent's appendix are denoted Resp. App. A followed by the page number. References to the record filed with Petitioner's Petition for Writ of Certiorari to the Illinois Supreme Court are denoted Pet. App. A,B,C,D,E, or F followed by the page number.

a custody dispute and an order of protection against Ms. Ironbear, which resulted in a joint parenting agreement being entered on April 12, 1990. The Kane County Court later terminated Ms. Ironbear's visitation rights, and she had virtually no contact with the children in the intervening two years. (Pet. App. F, pp.6,7,12.)

On December 4, 1992, Ms. Ironbear filed her motion to transfer jurisdiction pursuant to Section 1911 of the Indian Child Welfare Act of 1978 (ICWA)(25 U.S.C. §§1901 et seq. at §1911). On December 18, 1992, the Fort Peck Tribes filed their separate motion to transfer jurisdiction pursuant to the same provision of the ICWA. Following the denial of the motions, Ms. Ironbear and the Fort Peck Tribes separately petitioned the Second District Appellate Court for Leave to Appeal pursuant to Supreme Court Rule 306(A)(1)(5). On October 22, 1993, that court, over the dissent of one justice, reversed the decision of the trial court and ruled the matter should be remanded and transferred to the Fort Peck Tribal Court. This decision was appealed to the Illinois Supreme Court which in a 4-3 opinion issued October 19, 1995, reversed and remanded to the trial court the matter for further hearings to determine jurisdiction.

REASONS FOR DENYING THE WRIT

1. The United States Supreme Court lacks jurisdiction to review the Illinois Supreme Court ruling, because it is not a final judgment.

Petitioner brings this petition for writ of certiorari pursuant to 28 U.S.C. §1257(a). Section 1257(a) authorizes the Supreme Court to hear cases only where the highest state

court has rendered a "final judgment or decree." The Illinois Supreme Court's order of October 19, 1995, is not a final judgment or decree, fully disposing of this matter, and therefore Petitioner's petition should be denied as premature.

In this case, the Illinois Supreme Court entered an order remanding the case to the trial court for further proceedings in order to properly determine how the ICWA would apply to the specific set of facts presented by this matter. Depending upon the outcome of these further proceedings, this case may, in fact, be transferred to the jurisdiction of a tribal court, or may be found to be properly before the Illinois state court, for further adoption proceedings. In either event, all parties to the matter will have the opportunity following the trial court's ruling to pursue timely relief from the appropriate courts.

The finality requirement of §1257(a) promotes important interests of judicial economy and state and federal jurisdiction. As previously noted by the Court,

> (1) It avoids piecemeal review by federal courts of state court decisions;
>
> (2) It avoids giving advisory opinions in cases where there may be no real "case" or "controversy" in the sense of Art. III;
>
> (3) It limits federal review of state court determinations of federal constitutional issues to leave at a minimum federal intrusion in state affairs.

North Dakota State Bd. of Pharmacy v. Snyder's Drug Stores, Inc., 414 U.S. 156, 159 (1973). Those ends are furthered by allowing the state trial court in this case to proceed on remand to a final determination of the jurisdictional issues raised by Petitioner in its brief.

Despite the straightforward wording of §1257(a), the Court has, on prior occasions, set forth a very few exceptions to the finality requirement. However, none of those exceptions apply in this case.

The recognized exceptions to the finality requirement may be summarized as follows:

> (1) Cases in which the federal issue is conclusive of the case, or the outcome of the further state court proceedings has been preordained for all practical purposes;
>
> (2) Cases in which the federal issue has been finally decided by the highest court in the state and will survive to require a decision by this Court regardless of the outcome of the further proceeding;
>
> (3) Cases in which the federal issue has been finally adjudicated, and in which the federal issue cannot be later reviewed regardless of the outcome of further state proceedings; and
>
> (4) Cases in which the federal issue has been finally adjudicated, where further proceedings might result in the party seeking review prevailing on the merits on non-federal grounds, and where reversal of the state court decision on the federal issue would preclude any further litigation on the relevant cause of action.

See generally Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 479-483 (1975). None of the exceptions enumerated by the Court in Cox apply to this case, and thus Petitioner's request for review is premature.

The first exception, set forth in Mills v. Alabama, 384 U.S. 214 (1966), applies only where the remanded proceedings will, by necessity, result in a preordained

outcome. Obviously, that is not the case here, where the Illinois trial court has been asked to conduct an evidentiary hearing to determine the legal domicile of the minor children. If it is determined at that hearing that the minor's domicile was with their natural mother, then in accordance with the decision of the Illinois Supreme Court this matter will be transferred to the tribal court. In the absence of any allegations that the Illinois trial court's ruling on domicile is preordained, Petitioner cannot rely on the first exception to the finality requirement to justify its petition for writ of certiorari.

Likewise, the second exception, that the federal question will survive regardless of the outcome of the remanded state proceedings, is of no help to Petitioner. This exception, set forth in Radio Station WOW, Inc. v. Johnson, 326 U.S. 120 (1945), has been applied only in cases where the remand concerns solely state law questions that "could not remotely give rise to a federal question . . ." that may later be properly brought before the U.S. Supreme Court. Id., 326 U.S. at 127. In this case, further Illinois trial court proceedings are for the express purpose of determining what court has proper jurisdiction of this case pursuant to the federal statute, and therefore the outcome of those proceedings will directly implicate a question of federal law. The Radio Station WOW exception does not apply.

The third exception applies only in a case where the outcome of the further state court proceedings cannot possibly lead to an opportunity for this Court to review the matter in the future. The prime example of such a situation is California v. Stewart, 384 U.S. 436 (1966), in which a criminal case was remanded for a new trial. As the Court noted, should the state lose that new trial, it could not, by

law, bring any appeal from that acquittal. Further, if the state won the new trial, the state's constitutional claims would be moot. Thus, under those particular facts, there was no way in which the federal question decided by the state court could ever be brought before this Court following a new hearing on remand. In this particular case, the facts do not support such an allegation. It is true that further state court proceedings may moot Petitioner's claims, if the case winds up being transferred to the tribal court based on a determination by the trial court. Of course, that is true in any case that is remanded for further proceedings. However, such an outcome would provide Respondents with an opportunity to present this Court with the issue, and a contrary decision in this case will result in a final and appealable order from which Petitioner can, at a later date, pursue relief before this Court. The third exception to the finality requirement does not support Petitioner's request for writ of certiorari at this time.

Finally, the fourth exception is likewise inapplicable. This exception applies where: (a) there has been a final decision on some federal issues; (b) the case has been remanded for further proceedings unrelated to the federal issue; (c) the party seeking review before this Court could possibly prevail on the merits of the case on non-federal grounds; and (d) a decision by this Court in favor of that party on the federal grounds would conclude the litigation without any further proceedings on the state issues. See Cox, 420 U.S. at 482-483. This exception does not apply, because Petitioner cannot prevail in the further state court proceedings on a non-federal issue. The question remanded for further proceedings is a determination of what court has proper jurisdiction pursuant to the ICWA. The outcome of

that proceeding will, necessarily, entail an interpretation and application of the federal statute at question. Therefore, the first prong of this exception is not satisfied by the Petitioner. Further, reversal of the Illinois Supreme Court decision by this Court will not be preclusive of any further litigation on the relevant cause of action, but, rather, will simply determine in which court, the Illinois state courts or the tribal court, this matter can proceed. Because the Illinois Supreme Court decision has not finally decided that question, this case is not properly before the Court at this time.

For the foregoing reasons, review of this case at this time is premature. It is entirely possible that the Illinois trial court will, in fact, rule in favor of the tribal court having jurisdiction of this matter pursuant to the ICWA, and thus the Court would be spared the need for hearing Petitioner's request at all. This petition does not meet the finality requirement of §1257(a), and therefore Petitioner's petition for writ of certiorari should be denied.

2. The ruling by the Illinois Supreme Court is consistent with the objectives of the Congressional scheme set forth in the Indian Child Welfare Act, well established common law principles, and the reasoning of this court in Mississippi Band of Choctaw Indians v. Holyfield given the dramatically different circumstances.

The Illinois Supreme Court carefully reviewed both the ICWA and this court's Holyfield opinion in reaching its determination that well-established common law principles of domicile should be applied to determine whether the Illinois courts were automatically divested of jurisdiction under the

circumstances of this case. In so doing, the Illinois Supreme Court followed the guidance of this court, which has indicated that in reviewing the issue of domicile: "[w]e find it helpful to borrow established common law principles of domicile to the extent that they are not inconsistent with the objectives of the Congressional scheme." Holyfield, 490 U.S. at 48 (1989).

The Illinois Supreme Court looked to well-established common law principles of domicile as set forth in the Restatement (Second) of Conflict of Laws §22, Comments e, i (1971).[2] The Illinois Supreme Court correctly applied

---

[2]The Restatement (Second) Conflict of Laws §22, Comment e, states:

Abandoned child. An abandonment, as the term is used here, occurs in two situations. It occurs when the parent deserts the child; it likewise occurs when the parent gives the custody of the child to another with the intention of relinquishing his parental rights and obligations. Whether a child has been abandoned so as to bring the case within the scope of this Comment is a question involving the rules of domicil. The rules of the forum are applied, except as stated in § 8, to determine whether an abandonment has taken place (see § 13).

If a child is abandoned by his father, he takes the domicil of his mother if he has not been abandoned by her. So too, a child domiciled with his mother and abandoned by her takes the domicil of his father if he has not been abandoned by him. Except as stated in Comments f-i, a child abandoned by both parents retains the domicil possessed by the parent who last abandoned him at the time of the abandonment; a child abandoned by both parents simultaneously retains the domicil of the father at the time of the abandonment.

Under the local law of many states, a child who has attained years of discretion becomes emancipated upon being abandoned by both parents (see Comment f)

The Restatement (Second) Conflict of Laws §22 Comment i states, in part:

If both parents of a child are dead, or if the child is abandoned by both parents or by a surviving parent, and no guardian of the child's

well-established common law principles of abandonment to the circumstances of this case. This conclusion is perfectly consistent with the Congressional scheme set forth in the ICWA and does nothing to undermine the rights of tribes. These children have had virtually no contact with an Indian reservation or Indian relatives through the conscious choice of their parents and the tribes. Neither Ms. Ironbear nor the tribes took any interest in the manner and location that father chose to raise the children. But for the father's untimely demise, these children would likely never have had any contact with the reservation. If, as alleged in a verified pleading (Res. App. A.), the children's mother had in fact abandoned them to their non-Native American father, then well-established common law principles dictate that the domicile of the children was with their father prior to his death and should now be with the individual who stands in loco parentis to them. This individual is the father's sister. Under these circumstances, the Illinois Supreme Court's conclusion is entirely consistent with the Congressional scheme, state law[3] and well established common law principles.

The conclusion reached by the Illinois Supreme Court is also consistent with this court's opinion in Mississippi band of Choctaw Indians v. Holyfield, 490 U.S. 30, (1989). In Holyfield, the court interpreted the provisions and policies of the ICWA as it applied to two Indian parents who lived on a reservation and intentionally left the reservation

---

person is appointed, the child should acquire a domicil at the home of a grandparent or other person who stands in loco parentis to him and with whom he lives.

[3] See Donlon v. Miller (1976), 42 Ill.App.3d 64,71.

temporarily to give birth to twins who were placed for adoption with a non-Native American family. The Court recognized the important interest tribes have in raising Indian children and concluded that the Indian parents involved could not hide behind state law technicalities to avoid the purposes of Congress in adopting the ICWA. This reasoning followed because the Indian children at issue would have lived with their parents on the reservation and the tribes would have had a significant role in the cultural development of these children but for the intentional actions of the parents in seeking to avoid application of the ICWA. The circumstances in the instant case are dramatically different.

As the initial trial judge indicated, "The facts of this case are 180 degrees opposite the Holyfield case." (Pet.App.F, p.11.) This case involves a now 13-year-old girl and 9-year-old boy who have lived all or substantially all of their lives in a non-Indian environment by the conscious choice of their parents. The children are only 25% Assiniboine Sioux and this fact has never played any role in their development. The Illinois Supreme Court properly concluded that neither Congress nor this Court ever intended to extend the ICWA under these specific circumstances.

Finally, the tribe is incorrect when it states that Illinois rejected the existing Indian family doctrine. The majority opinion written by Justice Harrison never addresses the issue; therefore, the court split three to three on whether to apply the existing Indian family exception as law in Illinois. Under circumstances such as these, the existing Indian family exception better applies the purposes and

policies intended by Congress's passage of the ICWA.[4] The majority of states considering application of the existing Indian family exception have applied it as law.[5] Only a few courts have rejected the exception.[6] Other courts have applied the reasoning to not apply the Act even though they have not directly addressed the existing Indian family exception.[7]

The line of cases applying such an exception to the

---

[4]Numerous other provisions of the Act itself support the application and adoption of the existing Indian family doctrine. Section 1912(d) provides that efforts should be made to prevent the breakup of the Indian family while subsections (c) and (f) refer to "the continued custody of the child by the parent or Indian custodian" and the potential for emotional or physical damage to the child. Section 1914 again refers to the removal of the child from the parent or Indian custodian. Sections 1916(b), 1920 and 1922 also reflect the application of the Act to existing Indian families.

[5] In re Adoption of Baby Boy L., 645 P.2d 168 (Kan. 1982); Matter of Adoption of Crews, 825 P.2d 305 (Wash. 1992); Matter of Adoption of Baby Boy D, 742 P.2d 1059 (Okl. 1985) and Matter of S.C., 833 P.2d 1249 (1992); S.A. v. E.J.P., 571 So.2d 1187 (Ala. Civ. App. 1990); C.E.H. v. L.M.H., 837 S.W.2d 947 (Mo. App. 1992) and In Interest of S.A.M., 703 S.W.2d 609 (Mo. App. 1986); Claymore v. Serr, 405 N.W.2d 650 (S.D. 1987), but cf. Matter of Adoption of Baade, 462 N.W.2d 485 (S.D. 1990); and Matter of Adoption of T.R.M., 525 N.E.2d 298 (Ind. 1988), but cf. Matter of D.S., 577 N.E.2d 572 (Ind. 1991).

[6] In the Matter of Baby Boy Doe, 849 P.2d 925 (Idaho 1993); Matter of Adoption of T.N.F., 781 P.2d 973 (Alaska 1989); Matter of Adoption of a Child of Indian Heritage, 543 A.2d 925 (N.J. 1988); In re Junious M., 193 Cal.Rptr. 40 (Cal.App. 1983)

[7] Quinn v. Walters, 320 Ore. 233 (Ore. 1994); In re Interest of C.W., 479 N.W.2d 105; In the Matter of Application of Bertelson, 617 P.2d 121 (Mont. 1980)

ICWA better apply the purposes of Congress, especially as one commentator notes in cases such as this where an intra-family adoption is involved.[8] The Illinois Supreme Court could have followed the reasoning of a majority of jurisdictions considering an exception to the ICWA, as three of the four justices in the majority would have done. However, the Illinois Supreme Court was correct in applying well-established common law principles of domicile in remanding the matter back to the trial court for determination as to abandonment. This conclusion is consistent with the Congressional policies set forth in the ICWA; therefore, this court should deny Petitioner's petition for writ of certiorari.

---

[8] Note:The Indian Child Welfare Act: Does it Cover Custody Disputes Among Extended Family Members? 1 Alaska Law Review 157 (1984).

CONCLUSION

Because the Illinois Supreme Court opinion is not a final judgment, as required by 28 U.S.C. §1257(a), Petitioner's request for review is premature and the Court lacks jurisdiction to hear this case at this time. None of the judicially enumerated exceptions apply and therefore, the court should deny Petitioner's petition for writ of certiorari. Additionally, the ruling by the Illinois Supreme Court is consistent with the objectives of the Congressional scheme set forth in the ICWA, well established common law principles, and the reasoning of this court in Mississippi Band of Choctaw Indians v. Holyfield.

Wherefore, Respondents' request this Court deny the Petitioner's petition for writ of certiorari.

Respectfully submitted this _____ day of February, 1996.

_____

Bruce D. Strom

_____

Jeffrey S. McCutchan

STROM, REPAY & McCUTCHAN
920 DAVIS ROAD, SUITE 302
ELGIN, ILLINOIS 60123-1352
(847) 888-1616
Counsel for the Respondents

l\tubridy\brief.usc

APPENDIX A

IN THE CIRCUIT COURT FOR THE SIXTEENTH
JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

Case No. F KA 92 1269

IN THE MATTER OF THE PETITION OF	)
	)
LESLIE SCARLOTTE TUBORIDY and,	)
PATRICK TUBORIDY husband and wife,	)
	)
Petitioner,	)
vs.	)
	)
SANDRA ANN SANSABER, a minor	)
RICHARD JOSEPH SANSABER, a minor	)
BETTY JO IRON BEAR, All whom it may concern,	)
and ILLINOIS DEPARTMENT OF CHILDREN	)
AND FAMILY SERVICES,	)
	)
Defendants.	)

VERIFIED PETITION FOR ADOPTION

The Petitioners, LESLIE SCARLOTTE TUBORIDY and PATRICK TUBORIDY, by their attorneys JUERGENSMEYER, STRAIN AND ASSOCIATES, come before this honorable court and respectfully allege that;

1. They are husband and wife, of legal age, and

under no legal disability; and petitioners desire to adopt their niece and nephew, being the children of LESLIE TUBORIDY'S brother RICHARD, and therefore the residency requirement does not apply.

2. That they desire to adopt RICHARD JOSEPH SANSABER, a male minor child who was born on the 22nd day of March, 1988 at Sherman Hospital in the city of Elgin, County of Kane, state of Illinois.

3. That they further desire to adopt SANDRA ANN SANSABER, a female minor child who was born on the 15th day of April, 1984 in Poplar Montana.

4. That the father of the children was RICHARD JOSEPH SANSABER; that he resided in the County of Kane with his children until his untimely demise on November 18, 1992.

5. That a paternity order was entered in the Circuit Court of Kane County, Illinois, Case No. F KA 90 0082, which made the father custodial parent; furthermore that orders of protection were entered by the Circuit Court of Kane County, Illinois, Case No. F KA 90 0082, granting temporary custody to the father; and no other court orders have previously been entered affecting the adoption or custody of the child or the right of the petitioners to the children.

6. That the mother of the children is BETTY JO IRON BEAR; that she is domiciled in Elgin, Kane County, Illinois that she is of legal age but is an unfit person to have

custody of the children because of the following:

a. She has from time to time abandoned the children;

b. She has failed to maintain a reasonable degree of interest, concern or responsibility as to the children's welfare;

c. She has deserted the children for more than three months preceding to the commencement of this proceeding;

d. She has repeatedly neglected the children;

e. She has repeatedly been cruel to the children;

f. She has failed to protect the children from conditions within their environment injurious to their welfare;

g. She has engaged in open and notorious fornication;

h. She has exhibited habitual drunkenness with the children and others;

i. She has repeatedly failed to provide the children with adequate food, clothing, or shelter although physically and financially able to do so.

8. Petitioners are reputable persons with the character, ability, and means to rear, nurture, and educate the children in a suitable and proper matter.

WHEREFORE, the petitioners make RICHARD

JOSEPH SANSABER and SANDRA ANN SANSABER, the children sought to be adopted, and BETTY JO IRON BEAR, the mother of the children, parties defendant and ask the court:

1. To appoint a guardian ad litem to represent the interest of the children's sought to be adopted;

2. To terminate parental rights and declare the children wards of the court;

3. To appoint a guardian to make an investigation as required by law and to present to the court a written report;

4. To enter a judgement for adoption;

5. For such other relief as may be necessary.

_____

LESLIE SCARLETT TUBORIDY

_____

PATRICK TUBORIDY

_____

JUERGENSMEYER, STRAIN & ASSOCIATES.
Attorneys for Petitioners

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements as set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that as aforesaid that the undersigned verily believes the same to be true.

_____

LESLIE SCARLETT TUBORIDY

_____

PATRICK TUBORIDY

Kane County
Attorney Number: 01373706